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SUPREME COURT, U. S.

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Supreme Court of the United States

OCTOBER TERM, 1961

No. 861

JEFFERSON LAKE SULPHUR COMPANY,
Appellant

versus

STATE OF NEW JERSEY,
Appellee

On Appeal From the Supreme Court of New Jersey

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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The State's motion to dismiss or affirm is based on two alternative propositions:

1—The assertion that the judgment below rests on an adequate non-federal ground—that the notice of the shareholders' meeting, at which the amendment to appellant's certificate of incorporation was adopted, did not fully describe the amendment; and

2—Insofar as the judgment below rests on the holding that the State may, in order to effect escheat of property to itself, constitutionally prohibit contractual disposition of property by the owner in event of his disappearance, no federal constitutional right of appellant was invaded by this holding.

A

The sometimes troublesome question whether a state-court judgment is based on a federal or a non-federal ground, is not present in this case. The opinion of the Supreme Court of New Jersey shows affirmatively that that Court did not rest its judgment on the non-federal ground postulated by appellee.

The opinion of the Supreme Court of New Jersey does state that the notice of the meeting should have made full disclosure of all relevant facts surrounding the amendment; that this obligation was not adequately discharged (even though the proxy statement accompanying the notice had been approved by the Securities and Exchange Commission); and that "that reason alone is sufficient warrant for invalidating the amendment.

"But", the Court continues, "in our judgment, disposition of the matter should not be based upon or limited to issues of procedural infirmity. The importance of the basic question of corporate authority to amend the charter in the fashion attempted here urgently requires decision on the merits."

The Court then went on to base its decision squarely and solely on the holding that the amendment is invalid because it would be contrary to the policy of the State's escheat law for appellant's shareholders to dispose of their unclaimed dividends in appellant's favor.

B

The State next contends that this holding violates no federal constitutional right of appellant—that it is appellant's shareholders, not appellant, whose right to dispose of their property has been abridged by the State to implement its own appropriation of the property under its escheat law.

But, just as in *Buchanan vs Warley*, 245 US 60, 73, and *Pierce vs Society of Sisters*, 268 US 510, the State's invasion of the constitutional rights of others has injured appellant directly; and appellant is accordingly entitled to urge the constitutional question. See also *Shelley vs Kraemer*, 334 US 1; *Columbia Broadcasting System vs United States*, 316 US 407; *Commission vs Sanders Radio Station*, 309 US 470; *Truax vs Raich*, 239 US 33.

For these reasons, it is respectfully submitted that the motion to dismiss or affirm should be denied.

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May, 1962